

Affirmative Fair Housing Marketing Plan (Including Resident Selection)

The Commonwealth of Massachusetts has a compelling interest in creating fair and open access to affordable housing and promoting compliance with state and federal civil rights obligations. Therefore, all privately assisted housing or housing for inclusion on the Subsidized Housing Inventory (SHI) shall have an Affirmative Fair Housing Marketing Plan (AFHMP). *The affordable Use Restriction documents of said housing must require that the AFHMP, subject to the approval of the subsidizing or funding agency, shall be implemented for the term of the Use Restriction.* Affirmative Fair Housing requirements apply to the full spectrum of activities that culminate with occupancy, including but not limited to means and methods of outreach and marketing through to the qualification and selection of residents. All AFHMP plans must, at a minimum, meet the standards set forth by the Department of Housing and Community Development (DHCD). In the case of M.G.L. c.40B projects, the AFHMP must be approved by the Subsidizing Agency.

The developer (Developer) is responsible for resident selection, including but not limited to drafting the resident selection plan, marketing, administering the initial lottery process, and determining the qualification of potential buyers and/or tenants. The Developer is responsible for paying for all of the costs of affirmative fair marketing and administering the lottery and may use in-house staff, provided that such staff meets the qualifications described below. The Developer may contract for such services provided that any such contractor must be experienced and qualified under the following standards.

Note: As used in these AFHMP Guidelines, "Developer" refers to the Project Developer and/or the entity with which the Developer has contracted to carry out any or all of the tasks associated with an AFHMP.

A. Developer Staff and Contractor Qualifications

The entity as well as the individual with primary responsibility for resident selection, whether in-house staff or a third-party contractor, must have substantial, successful prior experience in each component of the AFHMP for which the party will be responsible, e.g. drafting the plan, marketing and outreach activities, administering the lottery process and/or determining eligibility under applicable subsidy programs and/or qualifying buyers with mortgage lenders.

Subsidizing Agencies reserve the right to reject the qualifications of any Developer or contractor. However, generally, Developers or contractors that meet the following criteria *for each component*, as applicable, will be considered to be qualified to carry out the component(s) for which they are responsible:

- The entity has successfully carried out similar AFHMP responsibilities for a minimum of three (3) projects in Massachusetts *or* the individual with primary responsibility for the resident selection process has successfully carried out similar AFHMP responsibilities for a minimum of five (5) projects in Massachusetts.
- The entity has the capacity to address matters relating to English language proficiency.

- "Successfully" for the purposes of these Guidelines means that, with respect to both the entity and the relevant staff, (a) the prior experience has not required intervention by a Subsidizing Agency to address fair housing complaints or concerns; and (b) that within the past five (5) years, there has not been a finding or final determination against the entity or staff for violation of any state or federal fair housing law.

B. Affirmative Fair Housing Marketing Plan

The Developer shall prepare the following materials which shall comprise an AFHMP:

- Informational materials for applicants including a general description of the overall project that provides key information such as the number of market/affordable units, amenities, number of parking/garage spaces per unit, distribution of bedrooms by market and affordable units, accessibility, etc.
- A description of the eligibility requirements.
- Lottery and resident selection procedures.
- A clear description of the preference system being used (if applicable).
- A description of the measures that will be used to ensure affirmative fair marketing will be achieved including a description of the affirmative fair marketing and outreach methods that will be used, sample advertisements to be used, and a list of publications where ads will be placed.
- Application materials including:
 - The application form.
 - A statement regarding the housing provider's obligation not to discriminate in the selection of applicants, and such a statement must also be included in the application materials.
 - Information indicating that disabled persons are entitled to request a reasonable accommodation of rules, policies, practices, or services, or to request a reasonable modification of the housing, when such accommodations or modifications are necessary to afford the disabled person equal opportunity to use and enjoy the housing.¹
 - An authorization for consent to release information.
- For homeownership transactions, a description of the use restriction and/or deed rider.

¹ It is important to remember that legal obligations with respect to accessibility and modifications in housing extend beyond the Massachusetts Architectural Access Board requirements, including federal requirements imposed by the Fair Housing Act, the Americans with Disabilities Act, and the Rehabilitation Act. Under state law, in the case of publicly assisted housing, multiple dwelling housing consisting of ten or more units, or contiguously located housing consisting of ten or more units (see M.G.L. c. 151B, § 1 for definitions), reasonable modification of existing premises shall *be at the expense of the owner* or other person having the right of ownership if necessary for the disabled person to fully enjoy the premises. M.G.L. c. 151B, § 4(7A). See also 24 C.F.R. part 8 for Rehabilitation Act requirements of housing providers that receive federal financial assistance.

The Subsidizing Agency must approve the AFHMP before the marketing process commences. In the case of a Local Action Unit (LAU), DHCD and the municipality must approve the AFHMP. The AFHMP shall be applied to affordable units² upon availability for the term of affordability and must consist of actions that provide information, maximum opportunity, and otherwise attract eligible persons protected under state and federal civil rights laws that are *less likely to apply*.

Outreach and Marketing

Marketing should attract residents outside the community by extending to the regional statistical area as well as the state.

- Advertisements should be placed in local and regional newspapers, and newspapers that serve minority groups and other groups protected under fair housing laws. Notices should also be sent to local fair housing commissions, area churches, local and regional housing agencies, local housing authorities, civic groups, lending institutions, social service agencies, and other non-profit organizations.
- Affordable units in the Boston Metro Area (Boston-Cambridge-Quincy MSA) must be reported to the Boston Fair Housing Commission's Metrolist (Metropolitan Housing Opportunity Clearing House). Such units shall be reported whenever they become available (including upon turnover).
- Affordable and/or accessible³ rental units must be listed with the Massachusetts Accessible Housing Registry whenever they become available (including upon turnover). See <http://www.chapa.org>.
- Available affordable ownership units must also be listed with CHAPA's lottery website (see <http://www.chapa.org>) and with the Massachusetts Affordable Housing Alliance (MAHA) website (see <http://www.mahahome.org>).
- Marketing should also be included in non-English publications based on the prevalence of particular language groups in the regional area. To determine the prevalence of a particular language by geographical area, see for example [http://www.doleta.gov/reports/CensusData/LWIA by State.cfm?state=MA](http://www.doleta.gov/reports/CensusData/LWIA%20by%20State.cfm?state=MA) .


All marketing should be comparable in terms of the description of the opportunity available, regardless of the marketing type (e.g., local newspaper vs. minority newspaper). The size of the advertisements, including the content of the advertisement, should be comparable across regional, local, and minority newspapers.

² The advertising component of the AFHMP applies to all units.

³ Note: The owner or other person having the right of ownership shall, in accordance with M.G.L. c. 151B, §4(7A), give at least fifteen days notice of the vacancy of a wheelchair accessible unit to the Massachusetts Rehabilitation Commission. Said statute also requires the owner or other person having the right of ownership to give timely notice that a wheelchair accessible unit is vacant or will become vacant to a person who has, within the past 12 months, notified the owner or person or person having the right of ownership that such person is in need of a wheelchair accessible unit.

Advertisements should run a minimum of two times over a sixty day period and be designed to attract attention. Marketing of ownership units should begin approximately six months before the expected date of project occupancy.

Pursuant to fair housing laws,⁴ advertising must not indicate any preference or limitation, or otherwise discriminate based on race, color, disability, religion, sex, familial status, sexual orientation, national origin, genetic information, ancestry, children, marital status, or public assistance reciprocity. Exceptions may apply if the preference or limitation is pursuant to a lawful eligibility requirement. All advertising depicting persons should depict members of classes of persons protected under fair housing laws, including majority and minority groups.

The Fair Housing logo () and slogan ("Equal Housing Opportunity") should be included in all marketing materials. The logo may be obtained at HUD's website at: <http://www.hud.gov/library/bookshelf11/hudgraphics/fheologo.cfm>.

Availability of Applications

Advertising and outreach efforts shall identify locations where the application can be obtained. **Applications shall be available at public locations including one that has some night hours; usually, a public library will meet this need.** The advertisement shall include a telephone number an applicant can call to request an application via mail.

Informational Meeting

In addition, the lottery administrator must offer one or more informational meetings for potential applicants to educate them about the lottery process and the housing development. These meetings may include local officials, developers, and local bankers. The date, time, and location of these meetings shall be published in ads and flyers that publicize the availability of lottery applications. The workshops shall be held in a municipal building, school, library, public meeting room or other accessible space. Meetings shall be held in the evening or on weekend days in order to reach as many potential applicants as possible. However, attendance at a meeting shall not be mandatory for participation in a lottery.

The purpose of the meeting is to answer questions that are commonly asked by lottery applicants. Usually a municipal official will welcome the participants and describe the municipality's role in the affordable housing development. The lottery administrator will then explain the information requested on the application and answer questions about the lottery drawing process. The Developer should be present to describe the development and to answer specific questions about the affordable units. It is helpful to have representatives of local banks present to answer questions about qualifications for the financing of affordable units. At the meeting, the lottery administrator should provide complete application materials to potential applicants.

Homeownership – Establishing Sales Prices

Sale prices shall be established at the time of the initial marketing of the affordable units. Thereafter, the prices of homes can not be increased for lottery winners, even if interest rates and HUD income guidelines change.

⁴ 42 U.S.C. § 3604(c); M.G.L. c. 151B, § 4(7B).

For large, phased developments maximum sale prices of units sold in subsequent phases will be calculated prior to the start of marketing for each phase, or approximately 6 months prior to expected occupancy of the units. In such cases, each phase will require its own affirmative fair marketing efforts and lottery.

C. Local Preference

If a community wishes to implement a local selection preference, it must:

- Demonstrate in the AFHMP the need for the local preference (e.g., the community may have a disproportionately low rental or ownership affordable housing stock relative to need in comparison to the regional area); and
- Demonstrate that the proposed local preference will not have a disparate impact on protected classes.

In no event may a local preference exceed more than 70% of the (affordable) units in a Project.

The Subsidizing Agency, and in the case of LAUs, DHCD as well as the municipality, must approve a local preference scheme as part of the AFHMP. Therefore, the nature and extent of local preferences should be approved by the Subsidizing Agency (or DHCD in the case of LAUs) prior to including such language in the comprehensive permit or other zoning mechanism.

Allowable Preference Categories

1. Current residents: A household in which one or more members is living in the city or town at the time of application. Documentation of residency should be provided, such as rent receipts, utility bills, street listing or voter registration listing.
2. Municipal Employees: Employees of the municipality, such as teachers, janitors, firefighters, police officers, librarians, or town hall employees.
3. Employees of Local Businesses: Employees of businesses located in the municipality.
4. Households with children attending the locality's schools, such as METCO students.

When determining the preference categories, the geographic boundaries of the local resident preference area should not be smaller than municipal boundaries.

Durational requirements related to local preferences, that is, how long an applicant has lived in or worked in the residency preference area, are not permitted in any case.

Preferences extended to local residents should also be made available not only to applicants who work in the preference area, but also to applicants who have been hired to work in the preference area, applicants who demonstrate that they expect to live in the preference area because of a bona fide offer of employment, and applicant households with children attending the locality's schools, such as METCO students.

A preference for households that work in the community must not discriminate (including have a disproportionate effect of exclusion) against disabled and elderly households in violation of fair housing laws.

Advertising should not have a discouraging effect on eligible applicants. As such, local residency preferences must not be advertised as they may discourage non-local potential applicants.

Avoiding Potential Discriminatory Effects

The local selection preferences must not disproportionately delay or otherwise deny admission of non-local residents that are protected under state and federal civil rights laws. The AFHMP should demonstrate what efforts will be taken to prevent a disparate impact or discriminatory effect. For example, the community may move minority applicants into the local selection pool to ensure it reflects the racial/ethnic balance of the HUD defined Metropolitan Statistical Area as described below.⁵ However, such a protective measure may not be sufficient as it is race/ethnicity specific; the AFHMP must address other classes of persons protected under fair housing laws who may be negatively affected by the local preference.

To avoid discriminatory effects in violation of applicable fair housing laws, the following procedure should be followed unless an alternative method for avoiding disparate impact (such as lowering the original percentage for local preference as needed to reflect demographic statistics of the MSA) is approved by the Subsidizing Agency. If the project receives HUD financing, HUD standards must be followed.

A lottery for projects including a local preference should have two applicant pools: a local preference pool and an open pool. After the application deadline has passed, the Developer should determine the number of local resident minority households there are in the municipality and the percentage of minorities in the local preference pool. If the percentage of minority local resident households in the local preference pool is less than the percentage of minorities in the surrounding HUD-defined area, the Developer should make the following adjustments to the local preference pool:

- The Developer should hold a preliminary lottery comprised of all minority applicants who did not qualify for the local preference pool, and rank the applicants in order of drawing.
- Minority applicants should then be added to the local preference pool in order of their rankings until the percentage of minority applicants in the local preference pool is equal to the percentage of minorities in the surrounding HUD-defined area.
- Applicants should be entered into all pools for which they qualify. For example, a local resident should be included in both pools.

⁵ Note: This protective measure may not be dispositive with respect to discriminatory effects. For example, the non-local applicant pool may contain a disproportionately large percentage of minorities, and therefore adjusting the local preference pool to reflect demographics of the regional area may not sufficiently address the discriminatory effect that the local preference has on minority applicants. Therefore, characteristics of the non-local applicant pool should continually be evaluated.

- Minorities should be identified in accordance with the classifications established by HUD and the U.S. Census Bureau, which are the racial classifications: Black or African American; Asian; Native American or Alaska Native; Native Hawaiian or Pacific Islander; or other (not White); and the ethnic classification Hispanic or Latino.

D. Household Size/Larger Households Preference

General

Household size should be appropriate for the number of bedrooms in the home. It is appropriate to set a minimum. A maximum household size for the units may be established provided that:

- Maximum allowable household size may not be more restrictive than the State Sanitary Code or applicable local bylaws, and may not violate state and federal civil rights laws.
- Maximum allowable household size may not be more restrictive than the Large Household Preference established below.

Larger Household Preference

Within an applicant pool first preference shall be given to households requiring the total number of bedrooms in the unit based on the following criteria:

- a. There is at least one occupant per bedroom.⁶
- b. A husband and wife, or those in a similar living arrangement, shall be required to share a bedroom. Other household members may share but shall not be required to share a bedroom.
- c. A person described in the first sentence of (b) shall not be required to share a bedroom if a consequence of sharing would be a severe adverse impact on his or her mental or physical health and the lottery agent receives reliable medical documentation as to such impact of sharing.

Within an applicant pool second preference shall be given to households requiring the number of bedrooms in the unit minus one, based on the above criteria. Third preference shall be given to households requiring the number of bedrooms in the unit minus, two, based on the above criteria.

A "household" shall mean two or more persons who will live regularly in the unit as their principal residence and who are related by blood, marriage, law or who have otherwise evidenced a stable inter-dependent relationship, or an individual.

Lottery drawings shall result in each applicant being given a ranking among other applicants with households receiving preference for units based on the above criteria. Household size shall not exceed State Sanitary Code requirements for occupancy of a unit (See 105 CMR 400).⁷

⁶ Disabled households must not be excluded from a preference for a larger unit based on household size if such larger unit is needed as a reasonable accommodation.

⁷ Note, however, that fair housing exceptions may apply: see HUD Fair Housing Enforcement—Occupancy Standard; Notice of Statement of Policy, Docket No. FR-4405-01 (1998).

E. Lotteries

The Lottery Application

Resident selection must generally be based on a lottery, although in some cases it may be based on another fair and equitable procedure approved by the Subsidizing Agency.⁸ A lottery procedure is preferred over a "first-come, first-serve procedure," as the latter procedure may disadvantage non-local applicants.

The application period should be at least 60 days. To ensure the fairness of the application process, applicants should not be required to deliver application materials and instead should be permitted to mail them.

The lottery application must address a household's:

- income
- assets
- size and composition
- minority status (optional disclosure by the household)
- eligibility as a first-time buyer (for ownership units)
- eligibility for local preference

The lottery administrator shall request verification (e.g., three prior year tax returns with the W2 form; 5 most recent pay stubs for all members of the household who are working, three most recent bank statements and other materials necessary to verify income or assets).

Applicants cannot be required to use a specific lender for their pre-approval letter or their mortgage.

Only applicants who meet qualification requirements should be included in the lottery.

Lottery Procedure

Once all required information has been received, qualified applicants should be assigned a registration number. **Only applicants who meet the eligibility requirements shall be entered into a lottery. The lottery shall be conducted after any appeals related to the project have been completed and all permits or approvals related to the project have received final action.**

Ballots with the registration number for applicant households are placed in all lottery pools for which they qualify. The ballots are randomly drawn and listed in the order drawn, by pool. If a project has units with different numbers of bedrooms, units are then awarded (largest units first) by proceeding down the list to the first household on the list that is of appropriate size for the largest unit available according to the appropriate-unit-size criteria established for the lottery. Once all larger units have been assigned to appropriately sized households in this manner, the lottery administrator returns to the top of the list and selects appropriately sized households for smaller units. This process continues until all available units have been assigned to appropriately sized applicant households.

⁸ In the case of project based Section 8 properties where resident selection is to be performed by the housing authority pursuant to a Section 8 waiting list, a lottery procedure is not required.

If the project includes units accessible or adaptable for occupancy by disabled persons, first preference (regardless of applicant pool) for those units shall be given to such disabled persons, including single person households, in conformity with state and federal civil rights laws.

The lottery administrator should retain a list of households who are not awarded a unit, in the order that they were drawn. If any of the initial renters/buyers do not rent/purchase a unit, the unit shall be offered to the highest ranked household on that retained list. This list may generally be retained and used to fill units for up to one year. However, other factors such as the number of households remaining on the list, the likelihood of the continuing eligibility of such households, and the demographic diversity of such households may inform the retention time of the list, subject to the approval of the Subsidizing Agency.

After the initial lottery, waiting lists should be analyzed, maintained, and updated (through additional marketing) so that they remain consistent with the objectives of the housing program and are adequately representative of the racial, ethnic, and other characteristics of potential applicants in the housing market region.

(April 8, 2008 change to the third paragraph: addition of "(regardless of applicant pool)").

Lottery Example

This theoretical lottery has an OPEN pool that includes all applicants and a LOCAL PREFERENCE pool with only applicants from the local area.

- Total applicants in lottery: 100
 - Total minority applicants: 20
 - The community in which the lottery takes place falls within the HUD Boston Metropolitan Statistical Area which has a minority population of 20.7%.
1. Determine the number of applicants who claim a LOCAL preference according to approved criteria.
 2. Determine the number of minority applicants in the LOCAL preference pool.
 3. Determine the percentage of minority applicants in the LOCAL preference pool.

Total Applicants in Local Preference Pool	Total Minority Applicants in Local Preference Pool	% Minority Applicants in Local Preference Pool
60	10	16.7%

Since the percentage of minority applicants in the LOCAL preference pool is below the percentage of minority residents in the HUD defined statistical area (16.7% as opposed to 20.7%), a preliminary lottery is required.

4. The 10 minority applicants who do not have LOCAL preference are entered into a preliminary drawing and assigned a rank based on the order of their draw. Minority applicants are added to the LOCAL preference pool in order of their rank

until the LOCAL preference pool has at least as great a percentage of minority applicants as the larger statistical area. In this example, 4 applicants will be added to the LOCAL preference pool to bring the percentage of minority applicants up to 21.8%.

Applicants in Supplemented Local Preference Pool	Total Minority Applicants in Supplemented Local Preference Pool	% Minority Applicants in Supplemented Local Preference Pool
64	14	21.8%

5. Draw all ballots from the adjusted LOCAL pool and assign rankings to each household. Preference for appropriately sized households will still apply and all efforts should be made to match the size of the affordable units to the legitimate need for bedrooms of each household.
6. Once all units for LOCAL residents have been allocated, the OPEN pool should proceed in a similar manner. All LOCAL residents should have ballots in both pools, and all minority applicants that were put in the LOCAL pool should remain in the OPEN pool as well.

F. Homeownership

1. Household Eligibility

A Subsidizing Agency housing program may establish eligibility requirements for homebuyers. In the absence of such provisions, the following requirements shall apply.

In addition to meeting the requirements for qualifying a Project or dwelling unit for the SHI (see Section II.A), the household shall not have owned a home within three years preceding the application, with the exception of:

- a. displaced homemakers, where the displaced homemaker (an adult who has not worked full-time, full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family), while a homemaker, owned a home with his or her partner or resided in a home owned by the partner;
- b. single parents, where the individual owned a home with his or her partner or resided in a home owned by the partner and is a single parent (is unmarried or legally separated from a spouse and either has 1 or more children of whom the individual has custody or joint custody, or is pregnant);
- c. households where at least one household member is 55 or over;
- d. households that owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations; and

- e. households that owned a property that was not in compliance with State, local or model building codes and that cannot be brought into compliance for less than the cost of constructing a permanent structure.

Individuals who have a financial interest in the development and their families shall not be eligible.

2. Final Qualification and Closing

Once the lottery has been completed, applicants selected to purchase units must be given a reasonable pre-specified time period in which they must secure financing. The Developer should invite the lottery winners to a loan application workshop. The Developer should make prior arrangements with local financial institutions with respect to financing qualified purchasers. Often such institutions will give preliminary approvals of loans, which make the remainder of the process more efficient for all parties.

Before a Purchase and Sale Agreement is signed, the lottery agent should submit income and asset documentation of the applicant to the Subsidizing Agency (to DHCD and the municipality in the case of a LAU). Income verification should include tax returns and W-2s from the past three years, five most recent pay stubs, three months recent bank statements and 401 K reports, reliable documentation as to other sources of income and assets. The Subsidizing Agency (to DHCD and the municipality in the case of a LAU) will then verify that the household's annual income does not exceed 80% of the area median income, or such lower income limit as may have been established for the particular project. The Subsidizing Agency (to DHCD and the municipality in the case of a LAU) also will verify that household assets do not exceed the maximum allowed. Closing of the sale will also be contingent on the Subsidizing Agency's (to DHCD and the municipality in the case of a LAU) approval of the buyer's financing.

Non-household members should not be permitted as co-signers of the mortgage.

3. Resales

AFHMP requirements apply to the housing for its duration. The AFHMP must include a plan, satisfactory to the Subsidizing Agency (to DHCD and the municipality in the case of a LAU), to address AFHMP requirements upon resale. The proposal must, at a minimum, require that units for re-sale to eligible purchasers be listed with CHAPA and MAHA's homeownership lottery sites as described above and establish minimum public advertising requirements. The proposal cannot impose the AFHMP requirements upon a homeowner other than requiring compliance with requirements of a Use Restriction, reasonable public advertising, and listing with CHAPA and MAHA.

A "ready-buyer" list of eligible buyers maintained by the municipality or other local entity is encouraged. This list may be created through local, regional, and statewide lists and resources. As stated above, the list should continually be analyzed, maintained, and updated (through additional marketing) so that it remains consistent with the objectives of the housing program and is adequately representative of the racial, ethnic, and other characteristics of potential applicants in the housing market region.